

COMPONENT TEN

PUBLIC AWARENESS AND PARTICIPATION

10.1 INTRODUCTION

The following component discusses how the public will be involved in the development of the Pesticide Specific State Management Plans, how they were involved in the development of the Generic State Management Plan, how they will be informed of significant State Management Plan (SMP) implementation activities and how they will be informed of pesticide detections. This section also discusses the Administrative Record requirements necessary for the Environmental Protection Agency's (EPA's) documentation of the public's involvement in the SMP process.

10.2 NOTICE OF PROPOSED RULEMAKING

State Management Plan development will include agency and public participation. South Dakota Codified Law (SDCL) provides a procedure for proposed rulemaking and for administering regulations when SMP pesticides warrant it through actions taken in Components 7 and 8. This includes adopting, amending or repealing rules. The following sections of law apply to SMP rule development:

SDCL §38-21-51. Administration and enforcement of chapter – Regulations.

The secretary of agriculture may establish rules promulgated pursuant to chapter 1-26 concerning:

- (1) The inspection of storage and disposal areas;
- (2) The inspection of application equipment and equipment storage areas;
- (3) The establishment of restricted pesticide uses or methods of distribution;
- (4) Standards for the transportation, storage and disposal of pesticides or pesticide containers;
- (5) The reporting of pesticide accidents and incidents;
- (6) Standards for the certification of applicators of pesticides;
- (7) Standards for the examination and testing of applicators of pesticides;
- (8) The establishment of fees for private applicator certification not to exceed five dollars per certification;
- (9) Pesticide applicator reporting and record keeping requirements;
- (10) The establishment of state restricted use pesticides for designated areas within the state;
- (11) Pesticide dealers reporting and record keeping requirements;
- (12) The establishment of certification categories and sub-categories;
- (13) The classification or sub-classification of certificates or licenses; and
- (14) The use of pesticides through irrigation systems.

SDCL §34A-2-18. Procedure for establishment of classification, standards or rules.

Before waters are classified or standards established or modified, or rules made, revoked or modified, the board shall follow the procedures established by chapter 1-26.

SDCL §1-26-4. Notice, service and hearing required for adoption of rules - Service on interim committee.

The following procedure shall be complied with prior to the adoption, amendment, or repeal of any rule, except an emergency rule:

- (1) An agency shall serve a copy of a proposed rule and any publication described in §1-26-6.6 upon the departmental secretary, bureau commissioner, or constitutional officer of the department to which it is attached;
- (2) Fifteen days after the service required by subdivision (1) or upon receiving the written approval of that officer to proceed, whichever comes first, and twenty days before the hearing, the agency shall serve the director with a copy of the proposed rules, a copy of any publication described in §1-26-6.6, a copy of the fiscal note described in §1-26-4.2, and a copy of the notice of hearing required by §1-26-4.1. Also, twenty days before the hearing, the agency shall serve the Bureau of Finance and Management with a copy of the proposed rules, a copy of the fiscal note described in §1-26-4.2, and a copy of the notice of hearing required by §1-26-4.1;
- (3) The agency shall publish the notice of hearing in the manner prescribed by §1-26-4.1, at least twenty days before the hearing;
- (4) The agency shall afford all interested persons reasonable opportunity to submit data, opinions, or arguments, either orally or in writing, or both, at a hearing held for that purpose. The hearing may be continued from time to time until its business has been completed. The agency shall keep minutes of the hearing. A majority of the members of any board or commission authorized to pass rules must be present during the course of the hearing required by this subdivision;
- (5) For a period of ten days after the hearing, the agency shall accept written comments regarding the proposed rule, unless the entity promulgating the rule is a part-time citizen board, commission, committee, task force, or other multiperson decision maker, in which case the record of written comments shall be closed at the conclusion of the public hearing. However, the hearing may be specifically continued for the purpose of taking additional comments;
- (6) After the written comment period, the agency shall fully consider all written and oral submissions regarding the proposed rule. A proposed rule may be modified or amended at this time to include or exclude matters which were described in the notice of hearing;
- (7) The agency shall make any corrections required by the director; and
- (8) The agency shall serve the minutes of the hearing, a complete record of written comments, and a corrected copy of the rules on the members of the Interim Rules Review Committee.

The time periods specified in this section may be extended by the agency.

SDCL §1-26-4.1. Notice of proposed rule - Methods and places of publication.

Any notice required by this chapter of SDCL will be published in a manner selected to notify persons likely to be affected by the proposed rule. Publication of a notice as a display advertisement in at least three newspapers of general circulation in different parts of the state shall be construed as compliance by the agency with the requirements for publication. The provisions of chapter 17-2 of SDCL do not apply to notices required by this section.

Notices of hearings and notices of intention to adopt emergency rules shall be mailed to all persons who have made timely requests of the agency for advance notice of its rule-making proceedings. A notice of hearing or a notice of intent to adopt emergency rules shall contain a narrative description of the effect of the proposed rule and the reasons for adopting the proposed rule. A notice of hearing shall also state where and when the hearing will be held, how data, opinions and arguments may be presented by persons unable to attend the hearing, and how the public may obtain copies of the proposed rule.

10.3 PUBLIC ROLE IN PESTICIDE SPECIFIC SMP DEVELOPMENT

The state will meet with the general public in at least three locations to discuss the Pesticide Specific State Management Plan (PSSMP) document. The purpose of the meetings will be to gather public comment on the PSSMP. Notification of the meetings will occur by announcements through radio, newspapers, and direct mailings to interested parties.

The information received will be reviewed by SDDA. Any and all items deemed applicable and appropriate will be incorporated into the PSSMP. The PSSMP will also be presented to the Nonpoint Source Task Force membership for comment. The plan will be forwarded to EPA Region VIII for approval. Components two and ten explain how the public will be involved in the review and reevaluation of the PSSMP. Discussion of SMPs has to date been with pesticide applicators during recertification meetings, in the Pesticide Applicator Update Newsletter, over the radio on Dakota Farm Talk and on several occasions with the Nonpoint Source Task Force membership.

10.4 NOTIFICATION OF DETECTIONS AND PUBLIC WATER SUPPLY VIOLATIONS

The SDDA will work cooperatively to disseminate information on all pesticide detections through agricultural chemical dealers, the Cooperative Extension Service, the Department of Environment and Natural Resources, television, radio, newspaper, and direct mailings to the public and the registrant. During specific investigations, farm well water sample results are routinely reported back to the well owner by the SDDA through direct mailing and telephone conversations. Also, the Safe Drinking Water Act Amendments of 1996 under 42 U.S.C §300 et seq. section 114 - Public Notification - requires an owner or operator of a public water supply system to report violations to persons served by the public water system.